IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs March 7, 2007

IN RE A.A.W. and D.S.W.

Appeal from the Chancery Court for Bledsoe County
No. 2848 Jeffrey F. Stewart, Chancellor

No. E2006-02561-COA-R3-PT - FILED APRIL 19, 2007

This is the second time that this Court has reviewed a judgment of the trial court terminating the parental rights of K.W. ("Mother") with respect to her two minor sons, A.A.W. and D.S.W., who were 7 and 10 respectively at the time of the second trial in May 2006. In that proceeding, the trial court found, by clear and convincing evidence, that grounds for terminating Mother's parental rights existed and that termination is in the best interest of the children. Mother appeals. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY and SHARON G. LEE, JJ., joined.

Keith H. Grant, Dunlap, Tennessee, for the appellant, K.W.

Carol Ann Barron, Dayton, Tennessee, for the appellees, L.D.N. and M.B.N.

OPINION

I.

This litigation began in October 2003 when the children's maternal grandparents, L.D.N. and M.B.N. ("the petitioners"), filed a petition seeking to terminate Mother's parental rights and asking to adopt the children.[1] Our earlier opinion in this matter sets forth the grounds of the petition:

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[1] The petitioners also sought to terminate the parental rights of the children's father, R.B.W. The trial court terminated R.B.W.'s parental rights following the first trial and that decision was not appealed and is, therefore, final. *See* ***L.D.N. v. R.B.W.***, No. E2005-02057-COA-R3-PT, 2006 WL 369275, at *1 n.1 (Tenn. Ct. App. E.S., filed February 17, 2006), *no appl. perm. appeal filed*.

> (1) Mother had abandoned the children by willfully failing to visit them or by engaging only in token visitation for more than four consecutive months immediately preceding the filing of the petition; (2) Mother had abandoned the children by willfully failing to support the children for more than four consecutive months immediately preceding the filing of the petition; (3) the children were dependent and neglected and Mother had made no reasonable effort to provide a suitable home for the children and it was unlikely that she would do so; (4) the children had been removed from Mother's home for more than six months by order of the court and the conditions which led to their removal still persisted; and (5) continuation of the parent-child relationship would greatly diminish the children's chances of an early integration into a stable and permanent home. Petitioners also alleged that it was in the best interest of the children for Mother's parental rights to be terminated.

L.D.N. v. R.B.W., No. E2005-02057-COA-R3-PT, 2006 WL 369275, at *1 (Tenn. Ct. App. E.S., filed February 17, 2006), *no appl. perm. appeal filed*.

Following the first trial, the court terminated Mother's parental rights pursuant to T.C.A. § 36-1-113(g)(1) after finding that she had abandoned the children by willfully failing to visit them and by willfully failing to support them, for a period of four consecutive months immediately preceding the filing of the petition. ***L.D.N.***, 2006 WL 369275, at *3. On Mother's first appeal, we vacated the trial court's judgment for two reasons. The first reason was because no verbatim transcript of the proceedings was made a part of the record on appeal, and because the statement of the evidence that was provided was so sparse as to make it impossible, as a practical matter, for us to determine if clear and convincing evidence had been presented to the trial court reflecting that Mother had, in fact, abandoned her children. As a second basis for vacating the first judgment, we noted that the trial court had failed to make a finding, as required by T.C.A. § 36-1-113(c)(2), that it was in the children's best interest for Mother's parental rights to be terminated. We stated:

> [I]n the absence of a transcript and in light of the altogether inadequate Statement of the Evidence provided to us on appeal, we are unable to conduct an effective review of the Trial Court's judgment terminating Mother's parental rights. This judgment must, therefore, be vacated. On remand, the Trial Court is instructed to make detailed findings of fact and conclusions of law regarding whether there are grounds for terminating Mother's parental rights. If grounds are proven by clear and convincing evidence, then the Trial Court must make detailed findings of fact and conclusions of law regarding whether there is clear and convincing evidence proving that it is in the children's best interest for Mother's parental rights to be terminated. Finally, if another appeal then is taken, this Court must be provided with a record

> of sufficient completeness to allow us to undertake an appropriate review of all of the evidence presented to the Trial Court.

L.D.N., 2006 WL 369275, at *5.

On remand, a second trial was conducted with the first witness being petitioner M.B.N., the children's maternal grandmother.[2] M.B.N. testified that the children have lived with her and her husband, petitioner L.D.N., for most of their lives. She also testified that Mother had lived with the petitioners up until approximately four years preceding the date of the second trial. According to M.B.N., Mother abruptly moved out of their house and moved in with an "older man." Mother initially took the children with her, but the petitioners filed an emergency petition for temporary custody which was granted. M.B.N. said she filed the petition because of the living conditions in the trailer to which Mother and the children had moved. M.B.N. stated that there was inadequate heating in the trailer and on one occasion she visited the trailer and there "was a bunch of people in the bedroom" and the trailer "smelled like drugs." M.B.N. testified that she would "pick the boys up [in] the evening on the way home from work and they wouldn't want me to take them back." M.B.N. further testified as follows:

> Q. Have you had your grandsons in your home since [obtaining temporary custody in 2003]?
>
> A. Yes.
>
> Q. Did [Mother] get her life straightened out so the children could be returned to her?
>
> A. No, ma'am.
>
> Q. Did she ever become employed?
>
> A. No, ma'am.
>
> Q. She ever get herself a place that was suitable for these children?
>
> A. No, ma'am.
>
> Q. To your knowledge, did she ever apply to the Court to have the children returned to her?
>
> A. No, ma'am. . . .

[2] Unless otherwise indicated, the testimony referred to in this opinion comes from the second trial.

Q. While the children were in your home from the time that you applied for the emergency custody and received that in February of 2003 until October of 2003, at any time did [Mother] come to you and ask to work this out with you?

A. No, ma'am.

Q. Is that what led to you and your husband deciding to petition the Court?

A. We didn't see her changing any. She was just moving from one place to another. She wasn't getting a job. She had been ordered to pay child support, which she wasn't doing.

Q. What was the court-ordered child support amount?

A. Sixty dollars a week.

Q. From March of 2003 until October of 2003, that was some several months before you filed the petition for adoption, let's talk about that period of time.

A. Okay.

Q. Do you recall [Mother] coming to visit the children during that period of time?

A. She came one time. . . . She came July the 4th on our 4th of July cookout we always have at the house. . . . She stayed in the house most of the time. The kids were out playing. . . .

Q. The one time that [Mother] came to visit the children . . . did you see her interact with her children at all that day?

A. No, not really. . . . She said hello and that was about it. . . .

M.B.N. added that Mother would call her every now and then to ask how the kids were doing, but Mother only spoke with the children once or twice. Mother never accompanied M.B.N. to any of the children's doctor appointments. Except for a two-week period when Mother was incarcerated, Mother was able to visit with the children, but she chose not to.

M.B.N. has been married to L.D.N. for 35 years, they both are employed, and they are financially able to care for the children. When asked if she believed it was in the children's best interest for Mother's parental rights to be terminated, M.B.N. stated:

> Well, they already call us mom and dad. That was their decision, not ours. We sat and talked to them, you know, and told them that if they wanted to, that was okay, but that was their decision. And they did want to call us mom and dad. They have lived with us basically all their life. . . . They go to school . . . [and they] are happy there. . . . They are happy at [our] house. They have got their own room. That's home. That's the only home they have ever known.

According to M.B.N., Mother has not visited with the children since December of 2005. M.B.N. stated that, as of the second trial date, Mother was "not employed that I know of and she's living with another man." M.B.N. is not aware of Mother having been employed in the past four years.

Mother made one child support payment of $60 in March of 2004. That was the only payment she made. Furthermore, she had not provided anything toward the support of the children in the form of food or clothing. M.B.N. is not aware of any medical problems Mother may have had between June and October 2003 that would have prevented her from working. According to M.B.N., Mother "has always been healthy."

Petitioner L.D.N. testified that he is not aware of Mother being employed anywhere. L.D.N. talks with Mother on the phone almost every week. While Mother asks L.D.N. how the children are doing, she has never asked to see the children. L.D.N. stated there was nothing that prevented Mother from visiting with her children between June and October 2003, or any other time for that matter. Mother only visited with the children one time during this time frame and did not pay any child support. The one time Mother did visit with the children was on the 4th of July. Mother spoke with the children a couple of times and then went back inside the house. L.D.N. stated that Mother takes care of herself by "[l]iving with different men." L.D.N. and his wife are able to care for the children and want to adopt them.

The next witness was Christy H. ("Christy"), who is Mother's sister. Christy testified that she visits her parents often and is aware of only one occasion between June and October 2003 when Mother visited with her children. That one visit was on the 4th of July and Mother stayed inside the house most of the time and Christy never observed Mother speaking with her children. Christy is not aware of Mother having a job and Mother has never told her that she could not work because of medical problems. Christy stated that whenever she tried to talk to Mother about her not visiting the children, Mother would tell her to "mind [her] own business." Christy also stated that Mother "bounced [around] between two or three different guys . . . ." Christy is not aware of anything that would have prevented Mother from visiting with her children.

Scott N. ("Scott"), who is Mother's brother, also was called as a witness on behalf of the petitioners. Scott was also present at the 4th of July cookout and indicated that Mother did not interact with her children and stayed in the house most of the time. Scott lives only a few minutes from his parents' house and visits with them often, sometimes as much as two or three times a week. From June through October 2003, he only saw Mother at his parents' house on one occasion which was the 4th of July cookout. Scott testified that Mother could have visited her children any time and there was nothing preventing her from doing so.

Mother's first witness was Ulysses Green ("Green"). Green claimed that he had taken Mother to the petitioners' house to visit the children. Sometimes Mother would take the children food but that stopped when Mother's car broke down. The last time he took Mother to visit the children, M.B.N. asked both of them to leave. Green is a member of the State Guard and stated that Mother also joined the State Guard a couple of months ago. Mother occasionally worked for Green helping him remodel houses. According to Green, Mother suffers from migraine headaches and has a knee injury from "[d]oing karate." Green stated that Mother is his roommate but he denied having an intimate relationship with her. On cross-examination, Green acknowledged that it was 2005 when he took Mother to the petitioners' house to visit with the children and he does not know if Mother ever visited the children in 2003 because he did not know Mother at that time. Green stated that Mother loves her children and wants to regain custody of them.

Not surprisingly, Mother's version of events is quite different from that of her parents and siblings. According to Mother, she tried to visit her children every weekend. If she was unable to go to her parents' house, she would call the children. Mother claimed she spent a lot of time with her children at the 4th of July party and that she continued to visit her children after the 4th of July "[m]ostly every – every weekend."

Mother stated that she has epilepsy and she suffers from anxiety and migraine headaches. Mother claims she was hospitalized due to these ailments in 2003. Mother also stated that she injured her knee in Karate class and had to have surgery. Mother claimed she was on various medications during the June through October 2003 time frame and that her doctor told her not to work. Mother acknowledged that her medical information had been subpoenaed to trial but she did not bring any of that information with her.

Mother testified to her attempts to find employment and mentioned the few places at which she had worked, on an on-again, off-again basis.

Mother testified that she tried to see the children more often but she lost her driver's license for a period of time due to her epilepsy and she needed someone to drive her to her parents' house. However, according to Mother, her parents complained whenever someone came with Mother. She testified that on these occasions M.B.N. would tell her to leave and not to come back.

Mother could not remember if she was employed in 2003. However, she was receiving short-term disability benefits from her employment at Lear Corporation. In addition, Mother was receiving

child support payments from the children's father. Mother claimed she made child support payments to her parents.

The second trial was on May 25th, and Mother stated that so far for the month of May, she had earned a total of $20. She testified that when she was unable to contribute to the rent obligation, Ulysses Green made sure the rent was paid. Mother currently is receiving food stamps. The home in which Mother is living with Mr. Green has one bedroom.

When Mother moved out of her parents' house, she moved in with a man named Larry. Larry was not her boyfriend at the time but they later started a relationship. Mother also has lived with a person named Jeff. Mother was living with Jeff between June and October 2003.

Mother claimed that each of the family members who testified at the trial was lying.

The trial court announced its decision from the bench. After reviewing the background facts, including how the children came into L.D.N. and M.B.N.'s custody, the trial court stated:

> Since February 14th of 2003, the proof indicates that [Mother] may have visited and called her sons on weekends. Most of the proof in this case, however, has centered on the visitation that occurred between June of 2003 and October of 2003 when this petition was filed. The only visit that was clearly established from the proof occurred on July the 4th, 2003. It was a period of short duration. It was during a family celebration or get-together and the proof indicates and shows that [Mother] paid little or no attention to her boys and had literally no interaction during the approximately three hours that she was there. . . . There is little evidence of any phone calls that have occurred. . . . [The oldest child has] had numerous trips to the doctor and it would appear that [Mother] has not participated in his treatment.
>
> [L.D.N.] says that nothing has stopped [Mother] from seeing her sons and that she had transportation or a car that would allow her to come and see them on any occasion. He also acknowledged that the boys loved to see their mother. She just doesn't seem to come is the problem. . . .
>
> There were a number of witnesses that were called. I heard from [Mother's] sister and her brother . . . and I find that they are credible witnesses and they support the testimony given by [the petitioners] in this case regarding visitation. [Mother's] answers during the course of her testimony were confused and wavering and that she has produced no records and no witnesses who could support her assertions during the time period in question. I observed the witnesses and their

demeanor during their testimony and I find that the [petitioners] and their witnesses are credible witnesses and I find that [Mother] is not.

I find [Mother] has failed to provide support for her children. She has no documentary support to show any payments were made between the time period of June of 2003 and October of 2003. In fact, there is no real support given during that period of time after that clearly up until today. She has not worked. She has produced no medical evidence that she can't work. She says that she does side jobs and she gets paid in cash, yet none of that has found its way into the children's hands for their use and benefit. The [petitioners] say that she has sent no support as child support except for some 60 dollars which was received after the time period of June 2003 through October 2003. These records were subpoenaed to be brought into court today and they were not produced by [Mother].

I will also acknowledge that [Mother] says she wants her sons and that she has not intended to abandon them, but I think her actions outweigh her words. She has produced no evidence of jobs, no work that she's done, no income that she's supported. There is no medical evidence to establish that she can't work. In fact, the proof is that she did work and was able to work for [Lear] Corporation the time period of 2000 and 2001. She says she earns money from these side jobs, but there is no proof of the dollars earned nor, again, was any of that money sent to the children.

[Mother], as her father has said, has survived by living with various men. Larry, Jeff, and now Ulysses, who was with her today as a witness. So as a result, I find that [Mother] has willfully and intentionally failed to support and visit her sons by clear and convincing evidence in the four months preceding the filing of this petition. There is little evidence since the filing that would vary this. Visits were token and infrequent during the proceedings and none since November or December of 2005 to date. And still no support.

There is an issue that since the children were removed from the home by order of the Juvenile Court whether the conditions that led to the removal persist and whether the likelihood that these conditions will be remedied so the children could be safely returned to the care of [Mother] and whether the continuation of the parent/child relationship would greatly diminish the children's chances of early integration into a safe, stable, and permanent home. I find that due to the facts recited and the fact that [Mother] has had at least three changes in residence

> with three different men since the separation from her children in February of 2003, that the condition that led to the removal of the children has not changed and that the return of the children to these fluid and uncertain conditions in which [Mother] lives would greatly diminish the children's chances of an early integration into a safe and a stable, permanent home. I find it is in the best interest of these children, since [Mother] has accepted little responsibility for these children and that the children have been living and continue to live in a safe, secure home that is stable with a good basis of support. For these reasons, I terminate the parent/child relationship of [Mother] with her two sons and grant the [petitioners'] request for adoption of these children.

II.

In ***Dep't. of Children's Servs. v. P.M.T.***, No. E2006-00057-COA-R3-PT, 2006 WL 2644373 (Tenn. Ct. App. E.S., filed September 15, 2006), *no appl. perm. appeal filed*, this Court stated:

> The law is well established that "parents have a fundamental right to the care, custody, and control of their children." ***In re Drinnon***, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988) (citing ***Stanley v. Illinois***, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972)). This right, however, is not absolute and may be terminated if there is clear and convincing evidence justifying termination under the pertinent statute. ***Santosky v. Kramer***, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). Clear and convincing evidence is evidence that "eliminates any serious or substantial doubt concerning the correctness of the conclusions to be drawn from the evidence." ***O'Daniel v. Messier***, 905 S.W.2d 182, 188 (Tenn. Ct. App. 1995).

P.M.T., 2006 WL 2644373, at *4.

III.

Our Supreme Court recently reiterated the standard of review for cases involving termination of parental rights:

> This Court must review findings of fact made by the trial court *de novo* upon the record "accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Tenn. R. App. P. 13(d). To terminate parental rights, a trial court must determine by clear and convincing evidence not only

> the existence of at least one of the statutory grounds for termination but also that termination is in the child's best interest. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002) (citing Tenn. Code Ann. § 36-1-113(c)). Upon reviewing a termination of parental rights, this Court's duty, then, is to determine whether the trial court's findings, made under a clear and convincing standard, are supported by a preponderance of the evidence.

In re F.R.R., III, 193 S.W.3d 528, 530 (Tenn. 2006).

IV.

The trial court terminated Mother's parental rights pursuant T.C.A. §§ 36-1-113(g)(1) and (g)(3) (Supp. 2006), which provide as follows:

> (g) Initiation of termination of parental or guardianship rights may be based upon any of the following grounds:
>
> (1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;
>
> * * *
>
> (3) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:
>
> (A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;
>
> (B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and
>
> (C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home . . . .

T.C.A. § 36-1-102(1)(A)(i)(2005) defines "abandonment" as follows:

> (1)(A) For purposes of terminating the parental or guardian rights of parent(s) or guardian(s) of a child to that child in order to make that child available for adoption, "abandonment" means that:
>
> (i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent(s) or guardian(s) of the child who is the subject of the petition for termination of parental rights or adoption, that the parent(s) or guardian(s) either have willfully failed to visit or have willfully failed to support or have willfully failed to make reasonable payments toward the support of the child. . . .

V.

Mother appeals claiming there was insufficient evidence presented to the trial court to conclude that she had abandoned the children, either by willfully failing to visit the children or by willfully failing to provide support, for a period of four consecutive months immediately preceding the filing of the petition.

VI.

Mother's testimony, for the most part, was contradictory to that of her parents and siblings. Mother claimed that, during the relevant time period, she visited with the children almost every weekend and that she made child support payments. The petitioners and Christy and Scott testified that Mother visited the children on only one occasion during the relevant time frame, and that Mother stayed in the house most of the time while the children were outside. The petitioners testified that Mother made only one child support payment during the entire time they have had custody of the children. In light of the vastly contradictory testimony, the trial court was required to resolve the glaring conflict. The trial court did just that when it made specific credibility determinations which significantly impacted its ultimate determination.

In ***Wells v. Tennessee Bd. of Regents***, 9 S.W.3d 779 (Tenn. 1999), the Supreme Court discussed witness credibility stating:

> Unlike appellate courts, trial courts are able to observe witnesses as they testify and to assess their demeanor, which best situates trial judges to evaluate witness credibility. *See State v. Pruett*, 788 S.W.2d 559, 561 (Tenn. 1990); *Bowman v. Bowman*, 836 S.W.2d 563, 566 (Tenn. Ct. App. 1991). Thus, trial courts are in the most favorable position to resolve factual disputes hinging on credibility determinations. *See Tenn-Tex Properties v. Brownell-Electro, Inc.*, 778 S.W.2d 423, 425-26 (Tenn. 1989); *Mitchell v. Archibald*, 971 S.W.2d 25, 29 (Tenn. Ct. App. 1998). Accordingly, appellate courts

> will not re-evaluate a trial judge's assessment of witness credibility absent clear and convincing evidence to the contrary. *See Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315, 315-16 (Tenn. 1987); *Bingham v. Dyersburg Fabrics Co., Inc.*, 567 S.W.2d 169, 170 (Tenn. 1978).

Wells, 9 S.W.3d at 783.

In ***Lockmiller v. Lockmiller***, No. E2002-02586-COA-R3-CV, 2003 WL 23094418 (Tenn. Ct. App. E.S., filed December 30, 2003), *no appl. perm. appeal filed*, this Court stated as follows:

> The credibility of witnesses is a matter that is peculiarly within the province of the trial court. *See* ***Bowman v. Bowman***, 836 S.W.2d 563, 567 (Tenn. Ct. App. 1991). That court has a distinct advantage over us: it sees the witnesses *in person*. Unlike an appellate court - which is limited to a "cold" transcript of the evidence and exhibits - the trial court is in a position to observe the demeanor of the witnesses as they testify. This enables the trial court to make assessments regarding a witness's memory, accuracy, and, most importantly, a witness's truthfulness. The cases are legion that hold a trial court's determinations regarding witness credibility are entitled to great weight on appeal. *See, e.g.,* ***Massengale v. Massengale***, 915 S.W.2d 818, 819 (Tenn. Ct. App. 1995). In the absence of unrefuted authentic documentary evidence reflecting otherwise, we are loathe to substitute our judgment for the trial court's findings with respect to the credibility of the witnesses.

Lockmiller, 2003 WL 23094418, at *4 (emphasis in original).

In light of the trial court's specific credibility determinations, the evidence does not preponderate against a finding that, during the four month period immediately preceding the filing of the petition, Mother: (1) visited the children only once; (2) that the one visit was properly characterized as "token visitation"; (3) that nothing prevented Mother from visiting with the children much more often; and (4) Mother intentionally chose not to. The preponderance of the evidence does not weigh against the trial court's finding that there was clear and convincing evidence to terminate Mother's parental rights pursuant to T.C.A. § 36-1-113(g)(1) because of her intentional failure to visit the children or engage in more than token visitation during the relevant time frame.

The evidence also demonstrates that: (1) Mother was earning at least some income from June through October 2003; (2) nothing prevented Mother from being much more gainfully employed; (3) Mother was under a court order to make child support payments of $60 per week; and (4) Mother did not make any child support payments during the relevant time period. Accordingly, we conclude that the preponderance of the evidence does not weigh against the trial court's finding that there was clear

and convincing evidence to terminate Mother's parental rights pursuant to T.C.A. § 36-1-113(g)(1) for her intentional failure to make any child support payments during the relevant time frame.

As set forth previously, the trial court also determined that there was clear and convincing evidence to terminate Mother's parental rights pursuant to T.C.A. § 36-1-113(g)(3). For reasons unknown to this Court, Mother does not raise an issue challenging the trial court's determination with respect to T.C.A. § 36-1-113(g)(3). Out of an abundance of caution, we will, nevertheless, address this finding by the trial court. The children certainly have been removed from Mother's care by order of a court for more than 6 months. The conditions which led to their removal "or other conditions that in all reasonable probability would cause the child[ren] to be subjected to further abuse or neglect" still remain. T.C.A. § 36-1-113(g)(3)(A). Mother has not demonstrated that she is even remotely close to being able to care for her children. She is not employed, has failed to establish any semblance of being able to maintain reliable employment, and she currently lives in a one-bedroom home with a man to whom she is not married. There simply is little or no likelihood that Mother will remedy this situation in the near future. Maintaining the parent-child relationship will greatly diminish the children's chances of early integration into a safe, stable and *permanent* home given that such a home is available to them right now. The preponderance of the evidence does not weigh against the trial court's finding that there was clear and convincing evidence to terminate Mother's parental rights pursuant to T.C.A. § 36-1-113(g)(3).

VII.

The final determination made by the trial court was that there was clear and convincing evidence that it is in the children's best interest for Mother's parental rights to be terminated. Once again, Mother does not expressly challenge a finding of the trial court on appeal. Nevertheless, we will address the trial court's "best interest" finding.

The factors a trial court must consider when deciding whether the termination of parental rights is in the best interest of a child are set forth in T.C.A. § 36-1-113(i) (Supp. 2006). In relevant part, these factors are:

> (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
>
> (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
>
> (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;

> (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
>
> (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
>
> * * *
>
> (7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;
>
> (8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or
>
> (9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

The above list is not exhaustive and there is no requirement that every factor must be present before a court can find that termination of parental rights is in a child's best interest. *See* ***Dep't. of Children's Servs. v. P.M.T.***, 2006 WL 2644373, at *9 (citing ***Dep't of Children's Servs. v. T.S.W.***, No. M2001-01735-COA-R3-CV, 2002 WL 970434, at *3 (Tenn. Ct. App. M.S., filed May 10, 2002)). After reviewing the applicable factors in light of the facts discussed at length above, we readily conclude that the evidence does not preponderate against the trial court's conclusion, made by clear and convincing evidence, that termination of Mother's parental rights is in the children's best interest.

VIII.

The judgment of the trial court is affirmed and this cause is remanded to the trial court for enforcement of the trial court's judgment and for collection of costs assessed below, all pursuant to applicable law. Costs on appeal are assessed to the appellant, K.W.

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CHARLES D. SUSANO, JR., JUDGE